IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5832 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANDYA GOPALBHAI HARGOVINDBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HN SOMPURA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/08/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 5-4-2000 passed by the District Magistrate, Bhavnagar declaring him as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, other co-detenu who has filed Special Civil Application No.5328 of 2000 has been set at liberty by this Court vide judgment and order dated 5-7-2000. It is submitted by the learned advocate for the petitioner that statements of four independent witnesses whose identity has not been disclosed have been recorded between 21-3-2000 and 22-3-2000 and same has been verified by Shri D.H.Parmar, Divisional Police Officer, Bhavnagar City and not by the detaining authority and, therefore, right of the petitioner under Article 22(5) of the Constitution of India of making an effective representation has been affected. As per the arguments of the learned counsel for the petitioner, this is not a verification in the eye of law. In support of this contention, learned counsel for the petitioner has relied upon a decision reported in 1996(1) G.L.H. 300 in the case of Jakirbhai Rahimbhai Nagori Vs. District Magistrate, Mehsana and Others wherein at head note the Court has held as under:

> "Claim of privilege by the detaining authority in respect of statements of witnesses--The Superintendent of Police, who examined the statements at the instance of detaining authority wrote below every statement one word `verified'--Held that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine--Continued detention illegal Observations of Division Bench in the case of Koli Ashwin Vs. State of Gujarat

in Special Criminal Application No.1812 of 1993 relied on".

4. It appears that the statements of witnesses have been verified not by the detaining authority but by the Divisional Police Officer, Bhavnagar City and, hence, the right of the petitioner under Article 22(5) of the Constitution of making an effective representation has been affected. In view of the above discussion, order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 5-4-2000 passed against the detenu is hereby quashed and set aside. The detenu-Pandya Gopalbhai Hargovindbhai is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

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